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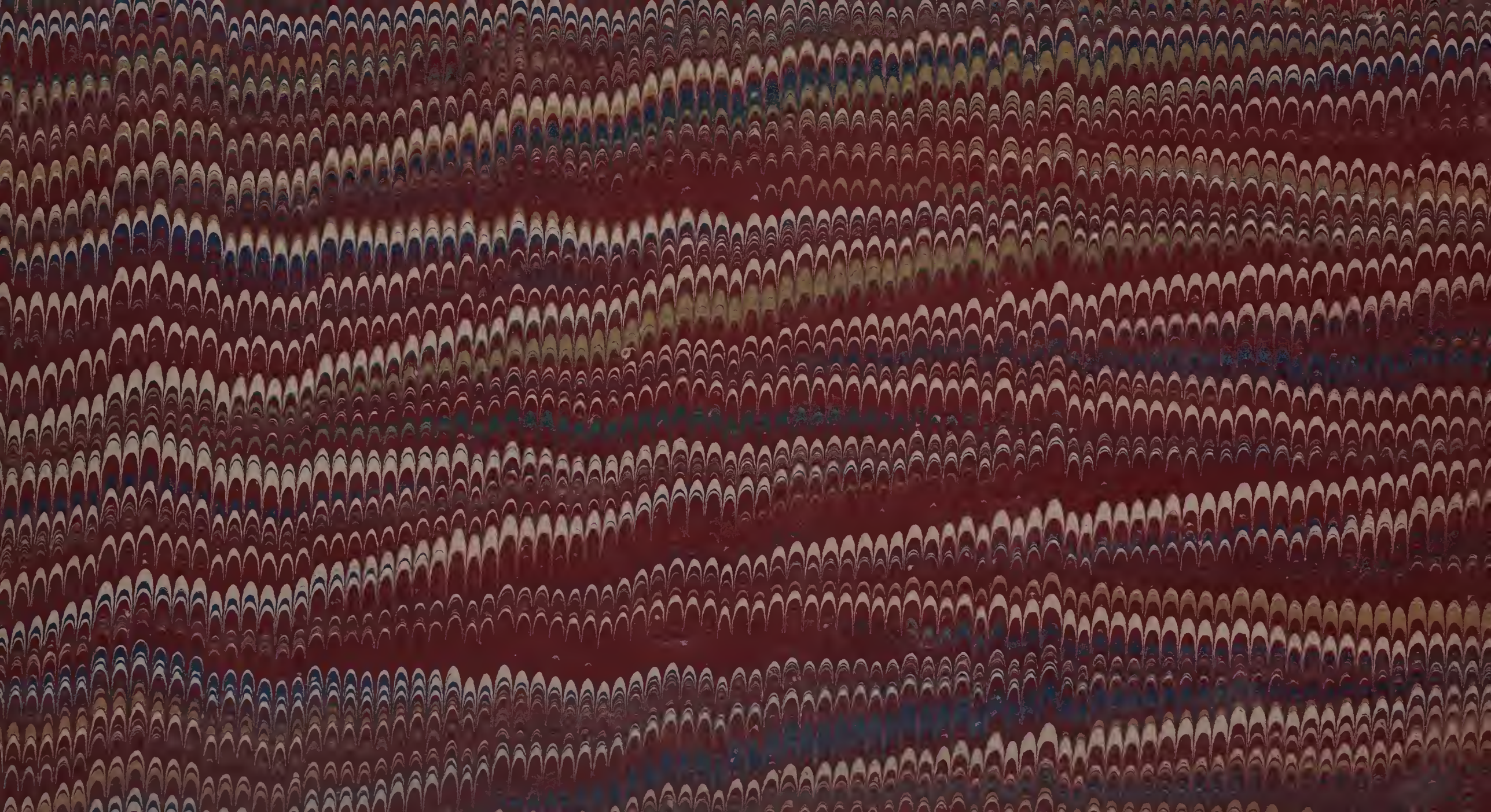

MEMORIAL

ADDRESSED AND PRESENTED

TO

THE HON. HUGH McCULLOUGH,

SECRETARY OF THE TREASURY.

AND

THE HON. EDWARD A. ROLLINS,

COMMISSIONER OF INTERNAL REVENUE.

Washington. D. C..

BY

The Associated Brewers' Society

OF

NEW YORK AND VICINITY.

SEPTEMBER. 1867.

JOHN J. FREEDMAN.

NO. 25 CHAMBERS STREET. NEW YORK.

Of Counsel for Petitioners.

NEW YORK:

PRINTED BY J. W. BELL, 39 PARK ROW.

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MEMORIAL

To the Hon. the SECRETARY of the TREASURY and the COMMISSIONER of INTERNAL REVENUE,

Washington, D. C.

The undersigned, on behalf of the Lagerbeer Brewers of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th Collection District of the State of New York, respectfully beg leave to submit the following:

That in brewing lagerbeer the quantity of water put into the kettle is not accurately measured, and from the very nature of the manner in which brewers acquire and keep up their supply of water, and conduct the same into the kettle cannot very easily be accurately measured; that in boiling the malt and hops a great allowance must be made for evaporation, and also for that portion of water soaked up by the malt and hops and remaining in them after the boiled beer is drawn or pumped off into the coolers or cooling apparatus; that in cooling the beer the quantity is reduced by evaporation, and contraction, and waste occurring subsequent thereto, in conducting the beer into the fermenting tubs; that during the process of fermentation and clearing of the beer, there is a constant waste going on in consequence of the impurities settling at the bottom, the shrinkage produced by the atmosphere, and the shavings or other materials used for the purpose of clearing and refining the beer, which soaks up a portion of the same; that in drawing off or

conducting the beer from the kettle to the coolers, from the coolers to the fermenting tubs, from the fermenting tubs to the large storage casks, and finally in filling the same off into the barrels or kegs, in which the same is usually sold, there is a further loss and waste occurring; that, therefore, no accurate measurement of lagerbeer actually brewed, is or can be taken until the time of sale, which in the case of the beer brewed for winter consumption takes place several weeks, and in the case of the lagerbeer brewed for the summer season, many months after its manufacture. That for the reasons aforesaid, the daily entries and return of a brewer required by the Internal Revenue Laws of the United States, to be made by him of the packages and number of barrels of lagerbeer daily made by him, are, and necessarily must be, based upon a mere estimate, according to the brewer's best information and belief of the probable quantity of clear and fine beer, which each brewing may yield at some future time, and which yield is not always uniform, but is materially influenced, and may considerably vary according to the quality of the malt and hops used, the skill and care on the part of the brewer or his foreman, the location and situation of the fermenting chamber and vaults and cellars, and the action of the outside atmosphere upon the same, and the temperature prevailing therein.

For lagerbeer differs mostly from other beers, by a peculiar process of fermentation, called "Untergährung" or fermentation from below, (the nature of which was first understood and explained by Professor LIEBIG,) which proceeds very slowly, and removes among other things, most of the vegetable albumen from the liquid, the removal of which is very important, because it (vegetable albumen) imparts to alcoholic liquor a great disposition to chemical change; it is also peculiar, and differs from all other beers, that while they are completely fermented in two or three days, and after that time ready for use; lagerbeer brewed for the summer season, undergoes two fermentations, the first of which requires two or three

weeks, and the other two months or longer ; all other beer if exposed to air, will turn sour very soon, while good lagerbeer may be kept almost unchanged for months, in half-full or open vessels. (See introduction to Liebig's Organic Chemistry, or URE's Dictionary, vol. 1, page 153.) For these peculiarities, which impart to lagerbeer a nature quite different from other beer, it should be treated differently than the general class of beverages called malted liquors. The relative quantities of the simple constituents of lagerbeer, are not always the same, but differ according to the peculiar method of each brewer, and the quality and quantity of hops and malt used, and the time required for fermentation. The limiting quantities of these constituents of lagerbeer, are according to LIEBIG's Dictionary of Chemistry, vol. 1, p. 770 :

Alcohol, . . .	2.9	to	5	per	cent.
Solid Substances, . .	4.0	"	8	"	"
Carbonic Acid, . .	0.15	"	0.18	"	"
Water, . . .	88.5	"	92	"	"

That another reason why a brewer of lagerbeer cannot make daily entries of the exact quantity of lagerbeer brewed every day, is, that it is customary, in order to produce a more uniform beer throughout the year and to equalize all differences in the quality of the malt and hops used for different brewings and all differences, as far as possible, in the quality of the beer produced, to mix ten or twelve brewings together ; and this is done by running a portion of each brewing, whenever the beer so brewed has sufficiently advanced in fermentation, from the fermenting tubs directly into the large casks or packages in which the same is intended to be stored away, and by filling them up in the manner indicated, at different times by degrees, until they are nearly full, without, however, taking an account of the quantity so filled in at any one time. That the daily entries and return of a brewer, however, of his daily sales are based upon the quantity of clear and ready made beer actually drawn off from the large storage casks into the barrels, half-barrels, or kegs, or vessels, in which the same is sold

or removed from the brewery for consumption or sale. That in consequence thereof, the balance of lagerbeer actually on hand in a lagerbeer brewery, when accurately measured, will in most cases, be found not to correspond with the number of barrels which, according to the entries and returns of lagerbeer made at the time, should be on hand ; and that this difference for the reasons aforesaid, and aside from all other occurrences in a brewery, which very easily may produce a similar discrepancy, as for instance, the bursting of large storage casks, the loss of a quantity of lagerbeer in consequence of becoming sour and its subsequent destruction an extra large consumption of beer by the hands employed in a brewery, which generally takes place without the knowledge of the proprietor, &c., &c., may in some cases amount to a great many hundreds of barrels, notwithstanding the most earnest endeavors of the brewer to comply, as far as in his power, with every provision of law in respect to the regulation of breweries ; and that the Internal Revenue Laws of the United States, in prescribing these daily entries and returns in the manner required of the exact quantity of lagerbeer daily made, and the description of the packages in which the same is contained, as well as the number of barrels made, require, if strictly and literally construed, the performance of an impossibility on the part of the brewer ; that said provisions of the law are, therefore, apt to be and in practice are differently construed and insufficiently understood and acted upon by the brewers, many of whom have been and still are of the opinion, that no brewer can safely, and in justice to himself as well as to the government, set down and enter more than about two-thirds of the water put into the kettle as the nett product of lagerbeer to be eventually derived therefrom.

That by the laws of France, Baden, Hesse Darmstadt, Nassau, &c., &c., an allowance of 35 per cent. upon the quantity of water put into the kettle is made for all losses and waste herein before referred to, and that this rule is as near correct as it can be made.

That if a brewer, under the Internal Revenue Laws of the United States, enters upon his books more than 65 per cent. of the amount of water put into his kettle for each brewing, his accounts will, in all probability, show a large deficiency in the quantity of beer on hand at the close of a year; if he should estimate more than 35 per cent. for loss and waste, he is liable to have an excess of beer on hand after some time. That no uniform rule or understanding has ever been adopted by the brewers as to how the quantity of beer daily brewed by each of them shall be estimated.

That the foregoing difficulties attending the manufacture of lagerbeer for the past twelve months, have been seized by many Revenue officers of the United States, as a means to annoy, trouble, and oppress the brewers of lagerbeer. Although the tax upon lagerbeer is to be paid only in the manner and at the time prescribed by sections fifty-two and fifty-three of the Act of July 13th, 1866, namely: by affixing upon each and every hogshead, barrel, keg, or receptacle in which the same may be contained when sold or removed for sale or consumption, from the brewery or any warehouse or place of storage connected therewith, and not at any time prior thereto, a stamp denoting the amount of tax required upon the lagerbeer contained therein in the manner required by said sections; many breweries have been complained of, and some of them have actually been seized and proceeded against in the United States Courts, for the reason that some Special Revenue Officer, totally unacquainted with the process of manufacturing and storing lagerbeer, saw fit to make a secret report to some superior officer, in general language, not under oath, and without further proof or allegation of particular facts, except that the quantity of lagerbeer actually on hand exceeded or fell short by a few hundred barrels of the balance of beer which ought to be on hand according to the entries and returns. In many cases these reports were made up in the most arbitrary and reckless manner, and were based upon the

most superficial examination, hearsay, and guesswork, by men totally unacquainted with said business; and in some cases they were totally false. In most instances, in counting the beer on hand, no allowance was made for the shavings and impurities collected at the bottom of the large casks, for difference in size of the large casks, nor for shrinkage produced by natural causes during the process of fermentation; and in some instances the pretended examination of books and cellars had not taken place at all in any manner. No explanation of the existing discrepances is hardly ever accepted from the brewer by the officials in New York; and that the affidavits in the case of the United States against Mr. Anton Hupfel, now in possession of, and on file in the office of, the District Attorney of the United States for the Southern District of New York, Hon. Samuel G. Courtney, copies of which are hereunto annexed, marked "Schedule A," pretty effectually illustrate the manner in which, as a general rule, examinations of the cellars or vaults of a brewery have been heretofore conducted.

In the Tenth Collection District nearly every brewer was assessed, in the month of June last, for an alleged deficiency in the quantity of beer on hand, upon a secret report made to the Assessor of said District by a Revenue Inspector, Colonel Wilbur, without any notice whatever to said brewers, and without an opportunity being given to the brewers to be heard in their defence: and the first notice or information of said assessment received by the brewers was the regular notice from the Collector of said District that said taxes had been assessed against them and placed in his hands for collection; and said brewers finally found themselves compelled to pay, and, under the advice of counsel, did pay the same under written protest, although they were totally innocent of the charges made against them in said secret report. That a copy of said report is hereunto annexed, marked "Schedule B," and that the said report shows upon its face that it is based entirely upon guesswork, and not upon an examination of facts, and that the

parties therein named were complained of, tried, convicted, and sentenced, without notice and without being given an opportunity to be heard in their defence. In the Second District, the private residence of a son-in-law of a brewer, situated at some distance from the brewery, was forcibly entered by a Special Revenue Officer during the absence of its proprietor at a watering-place, in the expectation of finding therein evidence of fraud on the part of the father-in-law, but without success. Another large brewery was seized for a slight discrepancy in the account of stamps bought, and for the further reason that on two wagon loads of empty kegs returned by customers, there was a single keg that had not left a piece of the stamp remaining upon it; and although the said discrepancy was immediately accounted for, and the proper destruction of the stamp, on withdrawal of the beer, in the manner prescribed by law, was a matter over which the brewer could have no control, the seizure was maintained for five days, and then only withdrawn upon payment of costs. In the city of New York a large number of brewers are still threatened with prosecutions for the alleged reason of having in the month of May last not the exact balance of lagerbeer stored away in their vaults, which, according to the entries in their books and their returns, they should have had, although said charge in many instances is totally unfounded; and in the rest of the cases, even if well founded, would not, for the reasons herein before stated, be a sufficient ground upon which a seizure could be defended and upheld. Other prosecutions are threatened for small irregularities in keeping the book and malt accounts, required by law to be kept, and for other small technical violations of the letter of the law.

The undersigned, on behalf of said brewers, further beg leave to represent that the brewers of lagerbeer as a class, are men of large means and undoubted responsibility, doing business in their own names, and owning a great deal of real property necessary for the proper and profitable transaction of their peculiar business; that their real estate and other property cannot very well be

sold or used for any other business, and that, in consequence thereof, they are compelled to do a safe business, to avoid all unnecessary risk, and, as a general rule, to keep engaged in said business after having once embarked therein ; that in the course of said business they are, for a period of at least six months in every year, compelled to keep on hand and on storage in their vaults and cellars, a very large stock of lagerbeer, amounting to a large amount of money ; and that for all these reasons, their business and property, both real and personal, in addition to the ample bonds given by them, according to law, offer more ample security to the government for the collection of any tax which is imposed, or may hereafter be imposed by law, upon the beer manufactured by them, than the business or property of any other class of manufacturers. That the tax of one dollar per barrel, under these circumstances, can hold out no inducement to a brewer of lagerbeer, peculiarly situated as he and his property is, to seek to escape payment of the same, and the large revenue derived from the breweries of lagerbeer of the first ten Collection Districts of New York is in itself the best evidence of the honesty of the brewers doing business therein.

That their business is of such a peculiar nature, that an interruption of the regular course of the same, for only a few days, may occasion a loss in beer, which becomes unsaleable and in customers, the business of all of whom is brought to a stand still the moment a brewery is seized, amounting to thousands of dollars in a single case ; that the machinery employed by the government for the enforcement of the Internal Revenue Laws is so complicated, that a seizure of a brewery may be maintained, in point of fact for nearly ten days, for the slightest cause or for no cause at all, before a brewer can succeed in effectuating its release against the will of the seizing officers, however innocent he may be and well prepared to prove his innocence, and however ably defended by counsel; that for these reasons it is cheaper for a brewer, whenever a seizure is threatened for the slightest cause

or no cause at all, to immediately buy his peace for a moderate price, than to defend his right and establish his innocence by litigation. The seizing officers of the government are well aware of this state of facts; and whenever a seizure is made, no matter for what cause or under what pretext, it is immediately enforced in the most strict and oppressive manner; no preparations are allowed to be made for supplying only for another day the daily route of customers; not a keg of beer is allowed to leave the premises; the brewer is immediately advised that it is cheaper to compromise, however unfounded the charge may be, and the seizure is continued and the investigation of the alleged charge postponed and delayed for a period of time sufficiently long to coerce the brewer against his will, and against the advice of legal counsel, into some sort of compromise.

These proceedings have been so frequent, that unless they are stopped pretty soon, those brewers who have so far paid their full tax, and who deemed it to be their interest that every other brewer should be made to pay his full tax, will begin to ask themselves the question, whether, if they are to be bled any how, there should not be a solid reason for it, and whether a combination between them and the government officials with a view to their mutual benefit, will not be preferable to the state of affairs heretofore existing.

The said brewers hold themselves in readinesss to substantiate at the proper time, the allegations contained in this memorial, and will petition the next Congress to investigate the same, and in the meantime beg leave to request the Hon. the Secretary of the Treasury and the Hon. the Commissioner of Internal Revenue, that immediate steps be taken to change this deplorable state of affairs; they respectfully submit, that as long as they do substantially comply with every material provision of the Internal Revenue Acts, they should not be permitted any longer to be persecuted for every small irregularity or technical violation of the letter of said acts, and their property should no longer be allowed to

be seized and their entire business interrupted and closed without a moment's notice, at the will of every irresponsible Revenue Officer who may choose to make a frivolous charge ; and they particularly request the Honorable gentlemen named, to prescribe, and adopt, and publish the following rules and regulations in the exercise of the large discretionary powers vested in them by law, namely :

(1.) That no brewery shall hereafter be seized and closed, except, after an examination duly had before some competent and responsible officer upon notice to the owner thereof, at which examination he shall have the right to meet his accusers, to cross-examine them, and to examine witnesses and adduce evidence on his own behalf, and at which examination, the facts justifying a seizure shall be clearly proven; that no re-assessment or assessment for any alleged deficiency under section 9, of the act of July 13, 1866, shall hereafter be made, except after a like examination, duly had upon a like notice, at which examination the facts justifying the assessment shall be clearly proven ; and that in said proceedings a mere technical violation of law or excusable omission to comply with any provision of law, or an alleged surplus or deficiency of beer on hand, shall not constitute a sufficient ground of seizure or assessment, as long as no actual damage has been sustained by the United States, in consequence thereof.

The adoption of this suggestion would in no wise enable a brewer during the pendency of an examination promptly instituted and efficiently conducted, to cover up a fraud actually committed or contemplated, or to change the status of the beer stored away in his vaults or cellars, for the reason, that the beer kept on hand and on storage, with the exception of a small quantity *prepared* for immediate use, is kept in large storage casks or packages without being bunged up ; that before the same will acquire its sparkling nature and other most essential qualities, without which it is unfit for sale and utterly unsaleable, it must be bunged up and specially prepared

for sale at, and for a certain period of time, which requires weeks of constant and close attention by men skilled in the art, and that whenever a certain quantity of beer is prepared and made ready for sale, the same must thereupon be speedily removed and sold, or else it will become entirely unfit for sale or consumption ; that a brewer for these reasons can only prepare a small quantity of his beer for sale at any one time, and the balance brewed for particular seasons in the year is stored away in large storage casks, of all sizes and shapes, in deep cellars or vaults, each of which, after the same has been filled up in the winter or spring to its utmost capacity, is closed up by mason work, in order to keep it sufficiently cool, with only an aperture left in the wall sufficiently large for a workman to creep through, and which is again closed by a small door. The beer, therefore, could not be removed out of time, except by tearing down the brick or stone walls separating the different cellars or departments of each cellar from each other, and even in such a case, the beer would be entirely unsaleable and worthless. This manner of storing away the beer in large casks of all sizes and shapes, without measurement of the contents of each cask, and in deep vaults and cellars, which have to be hermetically closed against the action of the atmosphere by stone and brick walls, and access to which is very difficult, render an examination of the actual quantity of lagerbeer on hand, so difficult and laborious, that the government officers will seldom, if ever, undertake the labor of a correct and truthful examination.

(2.) To recommend to the next Congress of the United States, to incorporate the rules and regulations so prescribed, adopted, and published, into the body of the law, and such changes in the law as will render the collection of the tax more simple and less onerous to the trade, by doing away with all unnecessary requirements of the law. Upon the latter point, the undersigned will present their views more fully before the next meeting of Congress.

(3.) To order a discontinuance of all cases now pending in the United Statess Court against brewers for alleged violations of the Internal Revenue Laws, in which no actual fraud has been committed, or a reference of them to the United States District Attorneys of their respective Districts, with full power to discontinue, if in their judgment after investigation, they should be of the opinion that the said cases are proper cases to be discontinued.

(4.) To order a suspension of all further proceedings upon the complaints made against brewers for an alleged surplus or deficiency of beer on hand in all cases not yet acted upon, where no fraud upon the Revenue has been committed, or a final adjustment of said matters, upon an investigation conducted according to the forms of law, within a short fixed period of time, before a competent officer, upon notice to the parties interested.

(5.) To order an adjustment of all irregularities in the books required by law to be kept, up to the first day of September last, and the opening of a new set of books from said day.

In conclusion, and for the purpose of reconciling conflicting opinions amongst brewers and Internal Revenue Officers, the undersigned beg further leave to inquire and to request the written ruling of the Department upon the following points :

(a.) Whether, under section 49 of Act of July 13, 1866, it is necessary to make daily entries of the number of packages and description of packages, as well as the number of barrels of beer brewed every day, or whether, in view of the impossibility of doing so, it will be deemed a substantial compliance if the forms of the printed brewers' account books are followed, which are issued with the sanction of the Department, and do not refer to the packages or description of packages : also, whether, in calculating and estimating the number of barrels of beer brewed daily, the number of barrels of beer so calculated and estimated should correspond

with the number of barrels of water put into the kettle, as near as possible, or with the number of barrels of beer expected to be realized thereafter from the daily brewings.

(b.) Whether, under section 49 of the Act of July, 1866, it is necessary to make daily entries of the quantities of malt daily used, or whether the insertion of a true copy of an entire invoice of malt will be deemed a sufficient entry for and during the entire period that it may take to exhaust it by brewing beer from it.

(c.) Whether it is necessary to affix the stamp prescribed by section 53 of the Act of July 13, 1866, to every keg of lagerbeer drank by men regularly employed in a brewery during their work, when the same is drank by them in the cellars or vaults connected with the brewery, but has not been removed there from, without an account being taken of the same, and in pursuance of a custom in the trade that all workmen employed in a brewery may drink sufficient for their wants, but where there is no deduction from their wages on that account in any manner.

We have been informed that in the State of Missouri this question has been decided by the U. S. Courts in the negative, and we claim and insist that this is the true construction of the law, for the greater portion of the beer so drank is consumed without knowledge on the part of the proprietor of a brewery.

By order of the Associated Brewers' Association of New York and vicinity.

HENRY CLAUSEN, Jr., *President.*
CHARLES RIVINIUS, *Vice President.*
RICHARD KATZENMAYER, *Secretary.*
MICHAEL KUNTZ, *Treasurer.*

SCHEDULE A.

DISTRICT COURT

OF THE UNITED STATES OF AMERICA, FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES
against
A QUANTITY OF LAGERBEER AND CERTAIN APPARATUS, VESSELS, &C., &C., AT NO. 229 EAST 38th-STREET, NEW YORK CITY.

Southern District of New York, ss:

ANTON HUPFEL, of the City of New York, being duly sworn according to law, deposes and says: That he is the owner and claimant of the lagerbeer and other property described in the information filed for the forfeiture of the same, by the United States Attorney, on the 15th day of July, 1867; that he has duly filed with the clerk of this court his answer and claim in opposition to the said information filed by the United States Attorney, and that the facts set forth and sworn to by deponent in his said claim and answer are true of deponent's own knowledge, and that a copy of deponent's claim and answer so filed, as aforesaid, is hereunto annexed.

And deponent further says, that on the 8th, 9th, and 10th days of July, 1867, he was absent from the City, and County, and State of New York, on a business visit to Allentown, in the State of Pennsylvania; that during his said absence, his lagerbeer and other property at No. 229 East 38th-street, in the City of New York, was

seized by W. Kryzanowski, an Inspector of the United States Revenue ; that on his return, and as soon as deponent was informed that said Kryzanowski had made a report, that on examination, he, the said Kryzanowski, had found that deponent had on hand and on storage at his said brewery, at No. 229 East 38th-street, only 2,683 barrels of lagerbeer, instead of 3,199 barrels, as deponent on the day of said examination, to wit: the 9th day of July, 1867, should have had on hand and on storage in accordance with the entries on the books, deponent requested several prominent brewers, named Michael Kuntz, Jacob Ahles, and Frederick Schaefer, and a cooper named August Schulz, to take an accurate and correct account of the quantity of lagerbeer on hand and on storage at deponent's said brewery, that on the 13th day of July, 1867, the persons named took said account, and on said day found 3,168 barrels of lagerbeer on hand, in the vaults belonging to deponent's said brewery ; that the affidavits of said persons to this effect are hereunto annexed.

And deponent further says, that during the first few days said W. Kryzanowski had seized deponent's brewery, there were carted away from said brewery, for the purpose of supplying deponent's daily customers, and with the knowledge and assent of the officers placed in charge of said brewery by said W. Kryzanowski, 38½ barrels of lagerbeer, which at the time of the seizure was filled off into kegs, and which have to be added to the 3,168 barrels still on hand on the 13th day of July, 1867 ; that, therefore, the whole quantity of lagerbeer on hand on the 9th day of July, 1867, upon which day said W. Kryzanowski made his alleged examination, and which is the date of his report, upon which report the seizure has been continued, amounted to 3,206½ barrels, instead of 2,683 barrels, as alleged by said W. Kryzanowski.

That for proof as to the manner in which the said Kryzanowski made the aforesaid examination, deponent

begs leave to refer to the affidavits of Adolph Glaser, George Sichler, and Jacob Orschler, hereunto annexed.

And deponent further says, that from the 11th of July at noon, until the afternoon of the 15th day of July, 1867, upon which day the said W. Kryzanowski and the officers in charge under him, were relieved by the United States Marshal, the said Kryzanowski kept the brewery of deponent under strict seizure, and would not permit a single keg to be taken out of said brewery, to the great damage of this deponent and his business; that the charge made by said Kryzanowski is utterly without foundation, and that deponent has already been put to great trouble and expense in defending himself against said unjust charge.

And deponent further says, that in brewing lagerbeer, the quantity of water put into the kettle is never accurately measured; that in boiling, cooling, and fermenting and clearing the beer, there is a constant loss occurring; that no subsequent accurate measurement is or can be taken until the time of sale, and that in consequence thereof, the return of a brewer of the quantity of beer daily made by him, is, and necessarily must be, based upon a mere estimate, according to his best information and belief; that the return of a brewer of his daily sales, however, is based upon the quantity of clean and ready made beer actually drawn off from the large standing casks into the kegs or vessels in which the same is sold or removed for consumption or sale, and that in consequence thereof, the balance of lagerbeer actually on hand in the months of June, July, or August, when accurately measured, will in many instances, be found not to correspond with the number of barrels which according to the entries of lagerbeer made at the time, should be on hand, and that this difference for the reasons aforesaid, and aside from all other occurrences in a brewery which very easily may produce a similar discrepancy, may in some cases amount to hundreds of barrels, notwithstanding the most earnest endeavors of the

brewer to comply with every provision of law in respect to the regulation of breweries; that this difference in deponent's case during a period of ten months, amounted to a surplus of only 7½ barrels.

A. HUPFEL.

Sworn to before me, this 19th day of July, 1867,

JOHN A. OSBORN,
United States Commissioner.

DISTRICT COURT

OF THE UNITED STATES OF AMERICA, FOR THE SOUTHERN DISTRICT OF NEW YORK.

Before HON. SAMUEL G. BLATCHFORD, *Judge.*

THE UNITED STATES
against
A QUANTITY OF LAGERBEER AND CERTAIN APPARATUS, VESSELS, UTENSILS, AND OTHER PROPERTY, AT 229 EAST 38th STREET, NEW YORK CITY.

The claim and answer of ANTON HUPFEL, owner and claimant of the lagerbeer and other property hereinafter more particularly described to the information of the Hon. Samuel G. Courtney, in behalf of the United States, against the said quantities of lagerbeer and other property.

And now comes Anton Hupfel, of the city of New York, owner and claimant of the said lagerbeer and other property, and for answer to the information of the Hon. Samuel G. Courtney, in behalf of the United

States against the said lagerbeer and other property, does allege and propound as follows :

First. That he is the owner of the lagerbeer and certain apparatus, vessels, utensils, and other property contained in the lagerbeer brewery, No. 229 East 38th-street, in the City of New York, and described and set forth in the information filed by the United States Attorney, for the forfeiture of the same, in the District Court of the United States for the Southern District of New York, on the 15th day of July, 1867, and that no other person is the owner thereof; and that it is true, that said lagerbeer and goods and chattels, as in said information alleged, were, on or before the 13th day of July, 1867, seized by one W. Kryzanowski.

Second. That it is not true that said lagerbeer, and said goods and chattels and other property, or any part or portion of the same, became forfeited in manner and form, as in the said information in that behalf alleged ; and that it is not true, that prior to said seizure, any tax or taxes were imposed by any provision of law upon the said lagerbeer or any portion thereof; or that the said lagerbeer or any portion thereof, was sold or removed or deposited or concealed or held by any person or persons, or was about to be sold or removed, or deposited or concealed or held by any person or persons in fraud of the Internal Revenue Laws of the United States, or any provision thereof, or with any design whatever to avoid payment of any tax or any portion thereof, to which it might be, or become subject.

Third. That it is true that the said tools, implements, instruments, and other property, as alleged in said information, were contained in the same place or building where the said lagerbeer was seized ; but it is not true that the same became liable to be forfeited, in manner and form, as in the information in that behalf alleged.

Fourth. That it is true that said utensils and vessels

described in said information, were utensils and vessels made use of for and in the making of said lagerbeer; but is not true that the same, prior to said seizure, or at any other time, were removed or deposited, or concealed with intent to defraud the United States of any tax or any part thereof, or that any tax whatever was imposed and payable, upon said lagerbeer or any part of the same.

Fifth. This respondent, on the contrary, alleges that said lagerbeer, was, and is, contained in large casks, used exclusively for the storage of lagerbeer during the hot season, and was, and is stored at the usual places and vaults used by this respondent for the storage of his lagerbeer during the summer months, in his accustomed manner, and a manner common to the trade in said article; that no part of said lagerbeer was drawn off into hogsheads, barrels, kegs, or other vessels, in which lagerbeer is contained, when sold or removed for consumption or sale; that with the exception of a small portion of the same, the said lagerbeer, at the time of the seizure, was not yet fit to be drawn off into smaller vessels, for the purpose of sale or removal for consumption or sale, but required a great deal of labor and preparation, before it could be sold or removed for consumption or sale; that the tax npon lagerbeer is to be paid only in the manner and at the time prescribed by sections 52 and 53, of the act of July 13th, 1866, namely: by affixing upon each and every hogshead, barrel, keg, or receptacle, in which the same may be contained when sold or removed for sale from the brewery or any warehouse or place of storage connected therewith, and not at any time prior thereto, a stamp denoting the amount of the tax required upon the lagerbeer contained therein, in the manner required by said sections, and this respondent, during his whole course of business since the passage of said act, has fully, and at all times, complied with said provisions; that he has also made due returns in the manner prescribed by law, to the proper officers under said act, long before the seizure of said lagerbeer,

of all lagerbeer brewed and manufactured and sold or removed for consumption or sale by him; that the lagerbeer seized as herein before specified constitutes the balance of beer made by him, and so returned to the proper officers, but not yet sold or removed for consumption or sale; that the quantity of said lagerbeer seized corresponds with his returns made, and his entries upon the books kept by him, and that upon the returns so made, and books kept by him, this respondent, long before the seizure of said lagerbeer, has made himself liable, and always has been ready and willing to pay the tax upon said lagerbeer, in the manner and at the time prescribed by law.

Sixth. That all and singular the premises are true.

Wherefore, this respondent prays that the said lagerbeer, and all other property seized and herein before referred to, may be restored to him.

A. HUPFEL.

JNO. J. FREEDMAN,
Proctor.

Southern District of New York, ss:

On this 19th day of July, in the year 1867, appeared personally, Anton Hupfel, the above named respondent, and was sworn to the truth of the foregoing claim and answer, and deposed and said that he was acquainted with the facts set forth in the foregoing claim and answer, and that the same is true of his own knowledge.

A. HUPFEL.

Sworn to before me, this 19th day of July, 1867,

JOHN A. OSBORN,
United States Commissioner.

Southern District of New York, ss :

JOHN CHRISTIAN GLASER, of said city, being duly sworn, says, that he is an adopted son of Anton Hupfel, and is the foreman in said Hupfel's brewery, at No. 229 East 38th-street, in the City of New York, and that his brother Adolph keeps the books and accounts and attends to the outdoor business of said brewery : that deponent has read the affidavit of Anton Hupfel hereto annexed, and that the facts therein stated are true of deponent's own knowledge ; and deponent further says, that when the Revenue Inspector, W. Kryzanowski, first called at said brewery on the 8th day of July, 1867, he required deponent to show him the books and the cellars ; that deponent replied that deponent's brother Adolph kept the books, but he was absent from the brewery collecting money, and had the key of the safe with him, and that the books were locked up in the safe, and that therefore his request to see the books could not be complied with at that moment, but would be, as soon as Adolph would return ; and that in regard to the cellars, deponent had no authority in the absence of his father to comply with the said Kryzanowski's request, and did not know how to act, but that if Kryzanowski could show that he had a right to make this demand he could do as he pleased ; that said Kryzanowski thereupon left, and in the afternoon of the same day returned and said he had seized the said brewery for being refused access to the books and vaults ; that deponent's brother Adolph, who had then just come home, offered to open the safe and show all books and accounts, but that said Kryzanowski declined to look at them for the reason that it was too late, and because he had already seized ; that the next morning, deponent, in company with John J. Freedman, as counsel for said brewery, proceeded to the office of the Metropolitan Revenue Board in the City of New York, and then and there explained to Colonel Messmore what occurred the day before, and said counsel then and there offered to show all books and papers and all cellars and vaults, and it was finally agreed between Colonel Messmore

and said counsel that said W. Kryzanowski should call at the office of said counsel, No. 25 Chambers-street, and from there proceed with said counsel to the said brewery, and examine into the affairs of said brewery; that deponent, from there in company of said counsel, proceeded to the office of said Kryzanowski, and was there told by persons in charge of said office, that said Kryzanowski would be in in a few minutes; that said counsel then requested said persons so in charge of said office to notify said Kryzanowski, as soon as he should come in, of the understanding made with Colonel Messmore, and that said counsel and deponent would wait at the place agreed upon until said Kryzanowski was ready to proceed to said brewery and commence his examination; that said persons promised so to do; that said Kryzanowski, as deponent has since been informed and believes to be true, shortly thereafter came to his said office and received said message, but did not call as requested; that deponent and said counsel waited several hours, and finally proceeded to the brewery alone, when they found that said Kryzanowski had been there and had made an alleged examination, and had just left, leaving, however, two officers behind in charge of said brewery. And deponent further says, that he has since learned that said Kryzanowski has made a report to the effect that upon an examination he found only 2,683 barrels of lagerbeer on hand, and, that according to the books kept, there should have been 3,199 barrels on hand on the 9th day of July, 1867, and that therefore he found a deficiency of 516 barrels; and deponent further says, that said report is untrue, and that the whole quantity of lagerbeer on hand on the 9th day of July, 1867, was 3,206½ barrels, as detailed and specified in the affidavit of Anton Hupfel and the affidavit of Michael Kuntz, Jacob Ahles, and August Schulz, hereunto annexed; that deponent was present when the last named persons took said account, and knows that the same is correct.

J. C. GLASER.

Sworn to before me, this 19th day of July, 1867.

JOHN A. OSBORN,
U. S. Commissioner.

Southern District of New York, ss :

ADOLPH GLASER, of said city, being duly sworn, says, that he is an adopted son of Anton Hupfel, and has charge of and keeps the books and accounts and attends to the outdoor business of Hupfel's brewery ; that deponent has read the affidavit of said Anton Hupfel, hereto annexed, and that the facts therein stated are true to deponent's own knowledge; and deponent further says, that on the 8th day of July, 1867, deponent left the said brewery early in the morning, and was engaged nearly all day outside in making collections ; that during that time the books and papers in the office were locked up in the safe, and deponent had the key to said safe with him ; that when deponent returned in the afternoon and saw W. Kryzanowski, this deponent, upon being informed of the object of said Kryzanowski's visit, immediately offered to show all books and papers, etc., etc., which offer was declined by said Kryzanowski upon the ground of being too late, as he already had made a seizure for having been refused access ; that deponent upon the following day stayed at the brewery and held himself in readiness to show said books, papers, etc., etc. ; that at about noon on that day said Kryzanowski came in, and in a hurried manner looked over said books and papers, and made some extracts therefrom; that he then went into the cellars accompanied by deponent and another man whom said Kryzanowski had brought along, and commenced to inspect the lager-beer there stored ; that deponent and said Kryzanowski did not, however, enter all the cellars, some of which were so completely filled with large casks that an entrance could be effected only by creeping through

a small opening; that access to all the casks was very difficult and that it was so dark that objects could not readily be distinguished; that for the purpose of getting at an estimate of the probable quantity of lagerbeer on hand, the services of two hands employed at said brewery were brought into requisition, and these two men, together with Kryzanowski's agent, proceeded with the examination, and being called upon to do so, these two hands gave to Kryzanowski's agent a statement of the probable number of casks and the probable contents of the same, according to the best opinion they could form under the circumstances and in the manner they had to proceed, namely, by merely guessing at it as near as they could; that said two hands did not pretend to be accurate or to have any positive knowledge upon the subject; that none of the parties engaged in said examination used or had any measure, rule, stick, or any instrument whatever for measuring said casks; that each cask was not separately examined or judged, and that the examination was simply an inspection with the eyes and guesswork throughout; that the statements so made by said two hands were taken by said agent to said Kryzanowski, and upon said statements the said Kryzanowski figured up the whole number of barrels of lagerbeer on hand, and made up his report. And deponent further says, that the true quantity of lagerbeer in the cellars on that day was 3,168 barrels, as specified in the affidavit of Michael Kuntz, Jacob Ahles, and August Schulz, hereto annexed, and that in addition thereto, there were 38½ barrels on hand drawn off into kegs, making altogether 3,206½ barrels.

ADOLPH GLASER.

Sworn to before me, this 19th day of July, 1867,

JOHN A. OSBORN,
U. S. Commissioner.

Southern District of New York, ss :

GEORGE SICHLER and JACOB CRSCHLER, of the City of New York, being severally duly sworn according to law, depose and say, each for himself, that he is the person referred to in the foregoing affidavit of Adolph Glaser as having assisted in the examination of the lagerbeer on hand on the 9th day of July, 1867, that he helped to make said examination, and that the facts set forth in said Adolph Glaser's affidavit as to the manner in which said examination was conducted, are strictly true ; that deponent had no knowledge of the number of casks or the capacity of each cask, and that he had to guess in all matters, and did not pretend to be in any way accurate.

GEORGE SICHLER,
JACOB ORSCHLER.

Sworn to before me, this 19th day of July, 1867,

JOHN A. OSBORN,
U. S. Commissioner.

DISTRICT COURT

OF THE UNITED STATES OF AMERICA, FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES,
against
A QUANTITY OF LAGERBEER AND CERTAIN APPARATUS, &C., &C., AT NO. 229 EAST 38th-STREET, NEW YORK CITY.

Southern District of New York, ss :

MICHAEL KUNTZ, of No. 77 and 79 Essex-street, in the City of New York, by occupation a brewer, and

Jacob Ahles, of No. 155 East 54th-street, in said city, by occupation a brewer, and August Schulz, of West 53rd-street, near 10th Avenue, in said city, by occupation a cooper, being duly sworn, according to law, depose and say, each for himself, that on the 13th day of July, 1867, at the brewery of Alton Hupfel, and in the presence of each other, they took an account of the lager-beer stored in the vaults belonging to said brewery, and that then and there they found the following quantities of lagerbeer on hand, to-wit:

NUMBER OF CASKS.	CAPACITY OF EACH CASK.	TOTAL NUMBER OF BBLS.
3	10 barrels.	30
5	14 "	70
4	8 "	32
7	14 "	98
14	12 "	168
18	12 "	216
7	15 "	105
14	14 "	196
6	13 "	78
12	12 "	144
1	15 "	15
9	26 "	234
1	15 "	15
13	26 "	338
2	18 "	36
1	18 "	18
7	26 "	182
1	15 "	15
15	26 "	390
2	18 "	36
1	14 "	14
2	12 "	24
2	8 "	16
1	6 "	6
1	18 "	18
11	26 "	286
1	18 "	18
11	26 "	286

NUMBER OF CASKS.	CAPACITY OF EACH CASK.	TOTAL NUMBER OF BBLS.
2	18 barrels.	36
3	12 "	36
2	6 "	12
	Barrels—3,168.	

Total number three thousand one hundred and sixty-eight barrels ; that deponents, thereupon, then and there to-wit, on said 13th day of July 1867, signed a written statement to the same effect ; and deponents further say that they are well acquainted with the practice of measuring casks of the description herein before referred to, and that the account taken by them is correct in every particular.

JACOB AHLES,
AUGUST SCHULZ,
MICHAEL KUNTZ.

Sworn to before me, this 18th day of July, 1867,

JOHN A. OSBORN,
United States Commissioner.

SCHEDULE B.

OFFICE INSPECTOR INTERNAL REV.
10th Dist. N. Y., Sing Sing.

A. HYATT, Esq.,
Assessor 10th Dist. N. Y.

I have the honor to submit the following report of my investigation of the breweries in this District, and to transmit statements of deficiencies, which have been ascertained from the best information that I could obtain.

I found very few of the brewers keeping such books as are required by law, especially the " Material " Book;

but through the Assistant Assessors they have now been supplied with the books, and I have notified them that they will be held strictly accountable for any neglect hereafter to comply with the requirements of the law.

Without definite knowledge as to exact quantities sold by them without payment of tax, I have yet found evidence of delinquency, sometimes by admission of the parties themselves; and after advising with your able assistant, (Mr. Henry,) I have concluded to recommend the assessment of the accompanying deficiencies, which, according to our best judgment are considerably within the mark, in every case. There has been, and still is, a manifest indifference on the part of these taxpayers to the requirements of the law, aud I am of the opinion that the assessment of these deficiencies, will have a wholesome effect upon them all.

I find as follows;

Gottlieb Schott,	deficiency	400	bbls. @	$1 00,	$400	tax.
Henry Zeltner,	"	100	"	"	100	"
Anton Hupfel,	"	300	"	"	300	"
Kirchhoff & Co.,	"	300	"	"	300	"
J. Diehl, Jr.,	"	400	"	"	400	"
Geo. Bruckner,	"	300	"	"	300	"
Anna B. Kolb,	"	100	"	"	100	"
John Eichler,	"	150	"	"	150	"
		Bbls. 2050.			$2050.	

Most of those brewers retail upon their own premises, and these deficiencies have mainly occurred in that way.

I have the honor to be,

Very respectfully yours,

R. H. WILBUR,

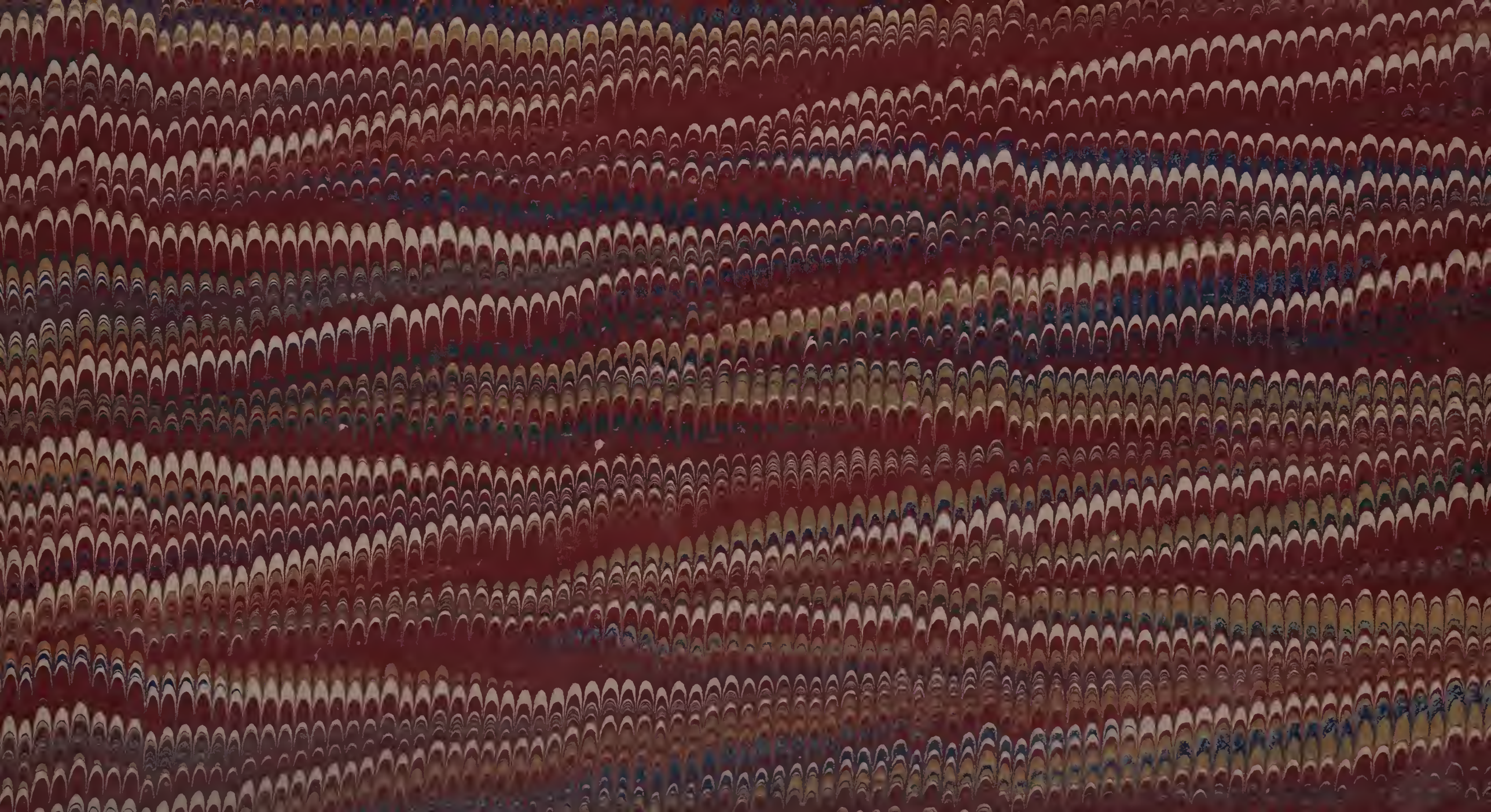
Revenue Inspector, 10th and 11th District, N. Y.

CERTIFICATE.

The foregoing MEMORIAL, with SCHEDULES attached, having been referred to the Executive Committee of THE BREWERS' ASSOCIATION OF THE UNITED STATES, upon due examination, the same has been fully approved, and the said Executive Committee joins in the Petition therein contanied.

By order of The EXECUTIVE COMMITTEE of the UNITED STATES BREWERS' ASSOCIATION.

HENRY CLAUSEN, Jr., *President.*
RICHARD KATZENMEYER, *Secretary.*
FREDERICK SCHAEFER, *Treasurer.*



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